

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAMES KRUEGER,

Petitioner(s),

vs.

TIM BRUNSMAN, WARDEN,

Respondent(s).

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Case Number: 1:07cv535

District Judge Susan J. Dlott

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Timothy S. Black filed on August 29, 2008(Doc. 12), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired September 19, 2008, hereby ADOPTS said Report and Recommendation. The Court further notes that on September 15, 2008, the certified and regular mail sent to petitioner was returned as undeliverable (Doc. 14).

Accordingly, petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to Ground One of the petition which this Court has concluded is waived and thus barred from review on procedural grounds because under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" as required under the first prong of the *Slack* standard. A certificate of appealability will not issue with respect to Ground Two, Three and Four of the petition because petitioner has failed to make a substantial showing of the denial of a constitutional right based on

these claims. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

The Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order adopting the Report and Recommendation will not be taken in “good faith” and, therefore, **DENY** petitioner leave to proceed on appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

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s/Susan J. Dlott

Susan J. Dlott
United States District Judge